

**Testimony in Support of the Appropriation
For the Upper Clark Fork River Basin Steering Committee
Before the Joint Appropriations Subcommittee on Natural Resources
January 30, 2007**

Chairman Ripley and members of the Subcommittee, my name is Gerald Mueller. I live at 440 Evans Ave., Missoula, MT 59801. I testify in support of the \$20,000 annual appropriation for the Upper Clark River Basin Steering Committee (Steering Committee) for the 2008-9 biennium. I am the Steering Committee Facilitator.

Background

The Steering Committee is one of Montana's oldest collaborative watershed group. It was created in 1991 pursuant to a state statute, 85-2-338. Its 22 members are appointed six by the basin's county commissions, six by the basins conservation districts, and ten by the DNRC Director to ensure that the range of basin water interests are represented on it. A list of current Steering Committee members is attached.

The Steering Committee was created to resolve a conflict between agricultural and fishery interests over conflicting water reservation applications before the then Board of Natural Resources and Conservation. Rather than engage in a million dollar contested case hearing, the parties reached an agreement calling for the creation of the Steering Committee together with a mandate for it to write a water management plan for the upper Clark Fork River basin, that portion of the basin above Milltown Dam just upstream of Missoula.

In 1994, the Steering Committee completed and sent to the governor and the legislature the *Upper Clark Fork River Basin Water Management Plan*. The goal of the *Plan* is twofold: to provide for continued water planning and management of the waters of the upper Clark Fork River Basin rooted at the local level; and to balance all of the basin's beneficial water uses. The *Plan* has been adopted as a section of the State Water Plan. Key recommendations in the *Plan* have been implemented through passage of statutes, adoption of rules, and actions by local governments. The most significant of these was the closure of the basin to most new surface water rights by the legislature in 1995.

Because of its inclusive nature of its membership and the experience and dedication of its volunteer members, the Steering Committee has made contributions to water law, regulations, and management that have benefited the upper Clark Fork River basin and the state at large. The Steering Committee led the way in addressing water leasing by entities other than DFWP. In 1995, it successfully sought the first statutory requirement for a hydrologic report to accompany ground water right applications and to authorize augmentation, both of which address an issue currently before this legislature, conjunctive management of surface and ground water. It won a rule change from the DNRC that clarified that no one has a right to the water in the outflow of a sewage treatment plant, thereby enabling land application of sewage effluent to benefit water quality. In 2004, it released a policy paper that helped focus attention on the need to speed up the state-wide adjudication of water rights. In 2006, it released another paper exploring how completion of the adjudication may result in fundamental changes to water rights enforcement, water administration and water management. The Steering Committee is currently looking into how pending removal of the Milltown Dam and the transfer of the existing 2,000 cfs 1904 hydropower water rights may impact water rights and management in the upper basin. A more complete summary of the Steering Committee accomplishments is attached to this testimony.

In May 2006, the Montana Watershed Coordinating Council awarded its 2006 Montana Watershed Stewardship Award to the Steering Committee.

Budget Breakdown

In the past, the Steering Committee was funded entirely through grants provided by private foundations and the DNRC Watershed Assistance Grant Program. For the coming biennium, the DNRC agreed to include \$20,000 per year in its budget.

The annual budget request breakdown is as follows:

<u>Coordinator</u>	
Salary (@\$35/hour) -	\$13,000.00
Travel & per diem -	\$750.00
<u>Meeting Expenses</u>	
Room rental (9 meetings @ \$75) -	\$675.00
Member travel & lunches -	\$3,000.00
<u>Administrative Expenses</u>	
Copy charges -	\$200.00
Postage -	\$225.00
Telephone & fax charges -	\$100.00
Supplies	\$50.00
<u>Publications</u>	\$2,000.00
<u>Total</u>	\$20,000.00

Continued Steering Committee Benefits

By providing the requested funding, the Steering Committee will continue to provide the basin the benefits that flow from its statutory mandate, including a forum for all interests to communicate about water issues, education about water law and water management issues, identification of short-term and long-term water management issues and problems and alternatives for resolving them, facilitation of the resolution of water-related disputes, coordination with other basin management and planning efforts, and advising government agencies about water management and permitting activities. Specific topics which the Steering Committee will address over the 2008-2009 biennium include: the Milltown Dam water right, water rights enforcement, implementation of the TU vs. DNRC Supreme Court decision for the basin's water rights closure, and continued outreach and education on water allocation processes resulting from the statewide water rights adjudication.

Upper Clark Fork River Basin Steering Committee Members 2007

Name	Area or Organization Represented	Appointed Entity
Bob Benson	Clark Fork-Pend Oreille Coalition	DNRC Director
Stan Bradshaw	Trout Unlimited	DNRC Director
Bob Bushnell	Lincoln Area Rancher	Lewis & Clark Conservation District
Jim Dinsmore	Hall Rancher	Granite Conservation District
Holly Franz	PPL Montana	DNRC Director
Carol Fox	Natural Resource Damage Program	DNRC Director
Nate Hall	Avista Corporation	DNRC Director
Sen. Dave Lewis	Lewis & Clark County	Lewis & Clark County Commission
Brent Mannix	Big Blackfoot Rancher	North Powell Conservation District
Jim C. Quigley	Little Blackfoot Rancher	DNRC Director
Pat Saffel	DFWP	DNRC Director
Rep. John Sesso	Butte/Silver Bow Planner	Butte/Silver Bow Commission
Marci Sheehan	ARCO	DNRC Director
Dan Ueland	Silverbow Rancher	Mile High Conservation District
Jules Waber	Powell County Superintendent of Schools	Powell County Commission

Upper Clark Fork River Basin Steering Committee

Accomplishments

January 2007

Changed Water Management Climate

Although it can point to many specific legal, policy, and on-the-ground water-related accomplishments, perhaps the most significant change to which the Steering Committee has contributed is the changed climate for managing water in the upper Clark Fork River basin. As the following excerpt from the Steering Committee's report to 1999 Montana Legislature discusses, the climate has changed from one of distrust and contention between and among local water users and government water planners and managers to one characterized by partnership and cooperation. This does not mean that all water issues have been resolved, all disputes ended, and water rights attorneys are without work. It does mean that the Steering Committee and other basin groups such as the Blackfoot Challenge and the Tri-State Implementation Council have demonstrated that respectful, collaborative approaches involving the broad spectrum water interests can and have successfully implemented innovative approaches to water management. The Steering Committee is not the only group to practice inclusive collaboration among local water users and interests and government water managers and regulators, but it was one of the first to do so.

In 1990, prior to the creation of the Steering Committee, a contested case hearing was scheduled to address competing water use issues in the upper Clark Fork Basin. Emotions ran high and trust low as water users prepared to make their arguments and defend their positions. Fish and wildlife managers, recreationists and conservation groups argued that to protect the fishery and other instream values, additional diversions of water from the River and its tributaries should not be allowed. Ranchers and irrigators, hydroelectric utilities, and industrial interests were concerned about their livelihoods, water rights, and the availability of water for future development. A series of drought years and prevailing low streamflow conditions heightened the competition and the universal concern that all water uses could not be sustained indefinitely.

At the same time, water quality concerns in the basin were mounting. The area from Butte to Milltown Dam was designated as the nation's largest Superfund complex due to impacts from historic mining activities. The effects of wastewater discharges on water quality became more apparent as drought reduced the amount of streamflow available for dilution. Nonpoint source pollution from a variety of land use practices continued to impair beneficial water uses in many miles of basin streams, and a host of new development activities were being proposed. Congress responded to citizen concerns of declining water quality by calling for a major pollution study of the Clark Fork Basin in amendments to the federal Clean Water Act. The State designated the Clark Fork Basin's water quality problems as among its highest priorities.

In 1991, the Steering Committee was officially convened and charged with the daunting task of addressing all of these water supply and water quality problems through a comprehensive, locally-based planning process.

Water resources management in the upper Clark Fork basin presents a much

different picture today. In the span of eight years, much has been accomplished to address the many and varied water use and water quality issues of the basin. The Steering Committee, affiliate groups, local partners and basin water users have proven that collaborative approaches can work when all interests are involved in and committed to finding common ground and workable solutions to problems.

Awards

On May 16, 2006, the Montana Watershed Coordinating Council awarded its 2006 Montana Watershed Stewardship Award to the Steering Committee.

Specific Accomplishments

The following list highlights actions taken by the Steering Committee over the past fifteen years either to address basin water issues directly or to assist or stimulate others to do so.

Legislation

- In 1991, interests whose representatives were subsequently appointed to the Steering Committee successfully sought legislation to suspend the upper Clark Fork basin water reservation process, temporarily close the basin to most new water rights, and create the Steering Committee and charge it with writing a basin water management plan.
- In 1995, after receiving the *Upper Clark Fork River Basin Water Management Plan*, the legislature enacted into law the *Plan's* recommendations to close the basin permanently to most new surface water rights and to create a pilot instream flow water leasing program.
- In 1997, at the Steering Committee's recommendation, the Legislature amended the basin water rights closure to allow development of surface water when stream flows are augmented with groundwater.
- Also in 1997, the legislature, at the Steering Committee's request, provided that a majority of the Steering Committee members would be appointed by the basin's counties and conservation districts.
- In 2001, in response to the Steering Committee's request that the state not walk away from a negotiated agreement between the state and Avista concerning Avista's hydropower water rights and Clark Fork basin water rights holders junior to Avista, Governor Racicot directed DNRC to draft legislation authorizing creation of a Clark Fork Basin Task Force charged with preparing a water management plan for the entire Clark Fork River basin. The legislature enacted this legislation.
- In 2005, the Steering Committee supported a permanent extension of the state-wide water leasing program, based on the results of the upper Clark Fork basin instream flow pilot program.
- Also in 2005, the Steering Committee's paper entitled "White Paper on the Montana Water Rights Adjudication" helped to stimulate action by the legislature to substantially increase funding for the Montana Department of Natural Resources and Conservation and the Montana Water Court so that the state-wide water rights adjudication can be completed within fifteen years.

Administrative Rules

- In 1997, the Steering Committee convinced DNRC to adopt a rule clarifying that no one has a right to the use of water discharged as effluent from a sewage treatment plant, thereby making land application of nutrient laden sewage treatment plant effluent possible.
- In 2005, the Steering Committee worked with the Natural Resources Conservation Service to

modify its EQIP application material to ensure coordination with DNRC water rights administrators.

Clark Fork Basin Water Management Planning

- Several members of the Steering Committee (Jim Dinsmore, Holly Franz, Steve Fry, and Eugene Manley) are participating on the Clark Fork River Basin Task Force that developed the *Clark Fork Basin Watershed Management Plan* in September 2004 and is working to arrange a contract between the State of Montana and the Bureau of Reclamation for water from Hungry Horse Reservoir to provide a long-term source of water for the Clark Fork Basin.

Instream Flow/Drought Management

- The Steering Committee has for five years retained consultant, Dennis Workman, to pursue mitigation of dewatering of the mainstem of the Clark Fork River in the general area below the Warm Springs Ponds and above the City of Deer Lodge. The consultant has identified the dewatered reaches critical to the fishery, specified the nature of the dewatering, identified the water rights holders in the effected stretch of the river, identified possible mechanisms to address the dewatering, determined the amount of minimum flows needed by the fishery, convened a group of local water users in an attempt to stimulate development of a local drought management plan for the effected reach, and obtained grant funds to install and record two years of data from flow measuring devices in the effected reach.
- The Steering Committee assisted water rights holders on the Morrison Ditch with obtaining measurements of ditch losses by the Montana Department of Natural Resources and Conservation. Reducing or eliminating these losses may reduce dewatering of Racetrack Creek.

Point Source Water Pollution Reduction

- The Steering Committee hosted a meeting between officials of the City of Philipsburg and the Director of the Montana Department of Environmental Quality (DEQ) concerning the need for and the design of a new City sewage treatment plan. Communication between the City and DEQ improved substantially as a result of this meeting.
- Members of the Steering Committee worked with the City of Deer Lodge, the National Parks Service, and DEQ to develop, fund, and implement land application of Deer Lodge sewage treatment effluent that would otherwise be discharged directly to the Clark Fork River.
- After issuance of the *Upper Clark Fork River Basin Water Management Plan* which recommended that basin communities ban phosphate detergent, Butte-Silver Bow did so.

Non-Point Water Pollution

- The Steering Committee assisted DEQ's efforts to implement its TMDL responsibilities in the basin by co-sponsoring meetings on the 303(d) list and pilot tests of voluntary water quality planning on Racetrack and Fred Burr Creeks.

New Water Storage

- The Steering Committee identified promising sites for new water storage and assisted local water users in considering restoring a former dam on Douglas Creek.

Repair and Restoration of Basin Water Storage Projects

- The Steering Committee helped to facilitate communication between DNRC and local Rock Creek residents when a sink hole threatened the East Fork Dam on the east fork of Rock Creek and during the subsequent repair activities.
- The Steering Committee supported funding by the Montana Legislature for the repair of East Fork and Nevada Creek Dams.

Water Dispute Resolution

- The Steering Committee sponsored the formation of the Georgetown Lake Watershed Committee in response to controversy concerning the operation of Flint Creek Dam and its effects on Georgetown Lake.
- The DEQ included in its 2002 record of decision for the Silver Bow Generation Project direction to the project developer that it ask the Steering Committee to develop a water management plan for Warm Springs Creek that adequately addresses minimum instream flows for the protection of the fishery. Because the Generation Project is on hold, the Steering Committee has not yet been asked to begin development of the management plan.
- The Steering Committee assisted Granite Conservation District as it sought enforcement of 310 violations causing discharge of old mine tailings into Fred Burr Creek.

Fishery

- The Steering Committee helped to involve water users in Rock Creek with the state bull trout recovery effort.
- The Steering Committee sponsored a grant request to a private foundation for a preliminary plan view, preliminary design and budget analysis for a stream renaturalization project on a portion of Rock Creek.
- As discussed above, the Steering Committee is currently sponsoring work to reduce chronic dewatering of the mainstem of the Clark Fork River.

Studies and Surveys

- The Steering Committee conducted studies of the basin's groundwater resources, including management of groundwater resources in other western states and summarizing records of existing groundwater development.
- The Steering Committee helped to initiate study of return flows in the Flint Creek Valley to understand and document the role of irrigation return flows by the Montana Department of Natural Resources and Conservation, the U.S. Geological Survey, and the Bureau of Reclamation.
- The Steering Committee also helped to stimulate measurements of losses in the ditches which affect flows in the mainstem of the Clark Fork River in the upper Deer Lodge Valley.
- The Steering Committee is conducting a survey of water right holders in two of the basin's sub-basins to assess their experience with the state-wide water right adjudication process and their expectations after this process is completed.

Policy Papers

- The Steering Committee has produced three policy papers, the "Conservancy District, An Option for the Management of Georgetown Lake Dam" in February 2004, the "White Paper on the Montana Water Rights Adjudication" in March 2004, and "How Will Completion of the

Adjudication Affect Water Management in Montana?" in February 2006. The first paper was drafted to discuss how a conservancy district might help resolve issues that have arisen as a result of the ownership and management of the Georgetown Lake Dam by Granite County. Drafts of the paper were discussed with the Granite County Commission and the final paper was presented to the Commission and the Flint Creek Advisory Committee. The adjudication paper resulted from discussions with Montana's Chief Water Judge Bruce Loble and officials of the DNRC and the Attorney General's Office. The final version of the paper was circulated to Judge Loble, the Adjudication Advisory Committee, the Environmental Quality Council, the Montana Association of Conservation Districts, and several water users organizations. This paper helped stimulate action by the legislature to increase funding to the DNRC and the Montana Water Court to speed completion of the state-wide water rights adjudication. The third paper was written to stimulate discussion by Montana water users, water managers, and policy makers of changes that will result from completion of the water rights adjudication as well as the implications of these changes so that appropriate responses to them can be identified, discussed and put in place before the final water rights decrees are issued.

Education

- Through well over a hundred publicly noticed and open meetings and other subbasin meetings, ten issues of a basin-wide news letter, the *Upper Clark Fork River Basin Water Management Plan*, and sponsorship of a master thesis, the Steering Committee has provided education on numerous water quantity, quality, and fishery related topics including water law, water rights, the on-going state water rights adjudication, the public trust doctrine, basin water rights closure, the basin's ground water resources, the status of the basin's water supply infrastructure, basin annual water supply, basin water use, basin hydropower production, water quality standards, the state TMDL law and planning process, water rights leasing for instream flow, grazing best management practices, utility irrigation efficiency programs, fish habitat needs and restoration projects, fish screens, irrigation return flows, the basin Superfund project, and the Natural Resource Damage Program.